

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

GEORGE W. KIRKLAND,

Plaintiff,

v.

TYGE M. TONE, Judge,

Defendant.

CASE NO. 1:05 CV 2131

MEMORANDUM OF OPINION
AND ORDER

UNITED STATES DISTRICT JUDGE LESLEY WELLS

On 7 September 2005, plaintiff pro se George W. Kirkland filed this in forma pauperis action under 42 U.S.C. § 1983 against Erie County Common Pleas Judge Tyge M. Tone. The complaint, which seeks monetary relief, alleges Judge Tone violated Mr. Kirkland's rights in connection with a 28 July 2005 probable cause hearing. For the reasons stated below, this action is dismissed pursuant to 28 U.S.C. § 1915A.

A district court is expressly required to dismiss any civil action filed by a prisoner¹ seeking relief from a governmental officer or entity, as soon as possible after docketing, if the court concludes that the complaint fails to state a claim upon which relief may be granted, or if the plaintiff seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §1915A; Siller v. Dean, No. 99-5323, 2000 WL 145167, at *2 (6th Cir. Feb. 1, 2000).

Judges are immune from liability for actions taken within the scope of their official duties. Pierson v. Ray, 387 U.S. 547 (1967) (judges); Imbler v. Pachtman, 424 U.S. 409 (1976) (prosecutors). There is no suggestion in the complaint that Judge Tone acted

¹ The complaint reflects that Mr. Kirkland is incarcerated at the Erie County Jail. Complaint, p.16.

outside the scope of his official duties with regard to the actions of which Mr. Kirkland complains. Further, to the extent he is seeking to challenge the fact or duration of his physical imprisonment, Mr. Kirkland's sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973).

Accordingly, this action is dismissed under Section 1915A. Further, the court certifies, pursuant 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/Lesley Wells
UNITED STATES DISTRICT JUDGE

Dated: 24 October 2005